IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.957 OF 2006.
IN
CRIMINAL APPEAL NO. 830 OF 2006.

Sopan Tukaram Malusare & anr. ... Applicants.
Versus.
The State of Maharashtra. ... Respondent.

Shri Vijay G.Peshwave for the Applicants.

Shri Rajesh More, A.P.P. for the Respondent-State.

CORAM : ABHAY S.OKA, J.

DATED : 4th October, 2006.

P.C.:

1. Heard the learned Advocate appearing for the Applicants and the learned A.P.P. for the State. Applicant No.1 is the father-in-law of the deceases wife of the Applicant No.2. Conviction of the Applicants is for offence under section 498A and 304B read with section 34 of the Indian Penal Code. The substantive sentence awarded is of 7 years.

2. The learned Advocate for the Applicants submitted that the prosecution has not ruled out the possibility of a natural or accidental death and hence the presumption under section 113B of the Evidence Act will not be attracted even though the death has taken place 2-1/2 years after the marriage. He submitted that no independent witness has been examined. He submitted that the allegation of the prosecution regarding demand for a jeep by the 2nd Applicant is falsified by the fact

that the said Applicant was already possessing a jeep.

3. I have perused the impugned Judgment and the notes of evidence of the prosecution witnesses and in particular P.W.1, P.W.2 and P.W.3. The well in which the deceased was found dead is admittedly situated on the field of the 2nd Applicant. The death has taken place within 2-1/2 years from the date of marriage. Considering the consistent evidence of the prosecution witnesses and especially the evidence of P.W.1 as regards the incident of 29th December 2004, I find that no case is made out for enlarging the 2nd Applicant on bail. So far as the 1st Applicant is concerned, his present age is stated to be 63 years. Considering the evidence on record, I find that a case is made out for enlarging the 1st Applicant on bail.

4. Hence the Application is disposed of by passing the following order:

i) Prayer for bail so far as the 2nd Applicant is concerned, is rejected.

ii) The 1st Applicant Shri Sopan Tukaram Malusare shall be enlarged on the same bail on which he was enlarged during the pendency of the trial subject to filing fresh bail bonds. The bail is granted

subject to condition that the 1st Applicant will report to the concerned Police Station once in every calender month till disposal of the Appeal.

iii) Hearing of the Appeal is expedited. Liberty to file private paper book.

Judge.